



आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 : टेलीफैक्स 26305136 - 079 :

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स्पीड पोस्ट

- क फाइल संख्या : File No : V2(76) 150,151/Ahd-South/19-20
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-73-74/2020-21**
दिनांक Date : 25.01.2021 जारी करने की तारीख Date of Issue : 11.02.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Orders-in-Original No. 01/Supdt./AR-I/Div-IV/19-20 dated 18.09.2019
and No. 02/Supdt./AR-I/Div-IV/19-20 dated 23.09.2019 passed by the Superintendent,
CGST, AR-I, Division-IV, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Sameer Metal Industries,
Plot No.13, Devang Estate,
Opposite Ajmeri Farm, Shahwadi,
Behrampura, Ahmedabad-380023.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

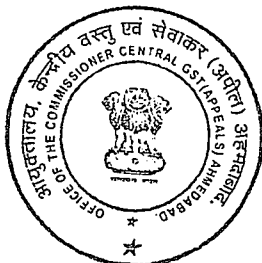
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Sameer Metal Industries, Plot No.13, Devang Estate, Opposite Ajmeri Farm, Shahwadi, Behrampura, Ahmedabad-380023 (hereinafter referred to as the “*appellant*”) has filed two appeals against the Orders-in-Original passed by the Superintendent of CGST & Central Excise, AR-I, Division-IV, Ahmedabad South Commissionerate (hereinafter referred to as the “*adjudicating authority*”). The details of the Orders-in-Original are as under :

Srl. No.	Order-in-Original No., Date and Passed by	Appeal No. Dated	Period	Amount involved (in Rs.)
1	<u>OIO No. :</u> 01/Superintendent/AR-I/Div-IV/2019-20 Dated : 18.09.2019 <u>Passed by :</u> Superintendent of CGST, AR-I, Div-IV, Ahmedabad South Commissionerate.	V2(76)150/Ahd-South/19-20	March-2016 to December-2016	2,30,444
2	<u>OIO No. :</u> 02/Superintendent/AR-I/Div-IV/2019-20 Dated : 23.09.2019 <u>Passed by :</u> Superintendent of CGST, AR-I, Div-IV, Ahmedabad South Commissionerate.	V2(76)151/Ahd-South/19-20	January-2017 to June-2017	1,48,790
			TOTAL	3,79,234

The Order-in-Original shown at Srl. No.1 above will hereinafter be referred as “*impugned order-1*” and the Order-in-Original shown at Srl. No.2 above will hereinafter be referred as “*impugned order-2*”.

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of Aluminium Circle falling under Chapter Head 76 of the Central Excise Tariff Act, 1985 (hereinafter referred to as “*CETA*”) and was holding Central Excise Registration No. AALPP3837BEM001. They used to clear the goods by availing benefit of Notification No.17/2007-CE dated 01.03.2007. It was found that the appellant had not applied for availing special procedure under Rule 15 of the Central Excise Rules, 2002 as provided under Notification No. 17/2007-CE dated 01.03.2007 for the period March-2016 to October-2016 and applied on 22.09.2016 for the period 01.11.2016 to 31.10.2017 without making payment of duty alongwith their application and thereby not fulfilled the provisions as provided under Para-3(3) of the said Notification. The Department did not grant permission to the appellant and the same was communicated to them vide letter dated 14.12.2016. However, the appellant on its own volition paid the duty as per the said Notification without any permission.

3. Therefore, two Show Cause Notices (hereinafter referred to as ‘*SCN*’) were issued to the appellant

- (i) dated 17.02.2017, proposing demand of central excise duty amounting Rs.2,30,444/- for the period March-2016 to December-2016 and



- (ii) dated 20.11.2018 proposing demand of central excise duty amounting Rs.1,48,790/- for the period January-2017 to June-2017;

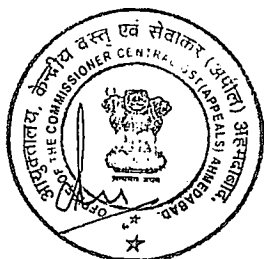
under Section 11A(1) alongwith interest under Section 11AA of the Central Excise Act, 1944. Penalty under Rule 25 of the Central Excise Rules, 2002 read with para-9 of Notification No.17/2007-CE dated 01.03.2007 and Section 11AC of the Central Excise Act, 1944, was also proposed to be imposed upon them under both the SCNs for contravention of the provisions of the said Notification.

4(i). The SCN dated 17.02.2017 was adjudicated by the adjudicating authority vide the Order-in-Original No.01/Superintendent/AR-I/Div-IV/2018-19 dated 25.05.2018 under which the proposal made under the said SCN was confirmed. However, being aggrieved with the said Order-in-Original, the appellant preferred an appeal with the then Commissioner(Appeal) who vide the Order-in-Appeal No. AHM-EXCUS-001-APP-069-2018-19 dated 14.09.2018 remanded the matter back to adjudicating authority for passing a comprehensive order giving his findings on all the claims made by the appellant and also regarding the applicability of SSI benefit in case of appellant. In the remand proceedings the adjudicating authority vide the impugned order-1 confirmed the demand alongwith interest and imposed penalty as proposed in the said SCN and given findings as directed under the said Order-in-Appeal.

4(ii). The SCN dated 20.11.2018 was adjudicated by the adjudicating authority vide the impugned order-2 under which the proposal for demand of central excise duty alongwith interest and imposition of penalty made under the said SCN dated 20.11.2018 was confirmed.

5. Being aggrieved with both the impugned orders, the appellant has preferred the appeals (as shown in the table under Para-1 here-in-above) on the following grounds :

- (i). that they had applied for special procedure vide their application dated 28.09.2014, seeking permission for 12 calendar months from 01.11.2014 to 31.10.2015 and also deposited Rs.12,000/- per month for one machine as per Notification No.17/2007-CE dated 01.03.2007;
- (ii). that the adjudicating authority in the remand proceedings has not given proper findings as directed under the Order-in-Appeal;
- (iii). that on 22.09.2016 they had applied for special procedure for 12 calendar month from 01.11.2016 to 31.10.2017;
- (iv). that since they had applied for permission the demand can not be made;
- (v). that in para-16 of the impugned order-1 the adjudicating authority has mentioned that they have applied for 12 calendar months without making payment of duty however in para-6, the adjudicating authority has mentioned that they have paid duty;



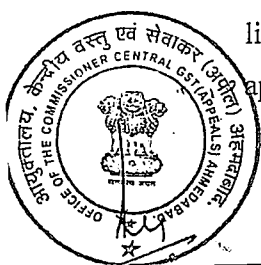
- (vi). that on one hand the adjudicating authority has mentioned that they have applied for special procedure and on other hand has mentioned that they had not been granted permission which is contradictory;
- (vii). that their total turnover is below 150 Lakh in any given year and therefore they are not liable to pay any duty as per Notification No.8/2003-CE dated 01.03.2003;
- (viii). that at least they are entitled the benefit under Serial No.223 of Notification No.12/2012-CE dated 17.03.2012 (General Exemption No.50) under which they are required to pay duty @ Rs.2500 per metric ton;
- (ix). that they rely upon the case law of M/s.Swatantra Bharat Mills reported at 1993(68)ELT 504(GOI) and M/s. Raman Boards Ltd. reported at 1988(36)ELT 615(Tri.);
- (x). that when they have applied for the permission, it is the responsibility of the competent authority to grant permission;
- (xi). that since they are not liable to pay any duty, the interest can not be charged and also since they have applied for permission and paying duty, the adjudicating authority erred in order of confiscation and imposition of penalty;
- (xii). that in the present case Rule 25 is not at all applicable as the same is subject to Section 11AC and the ingredients of the said Section are not present in the instant case; reliance is placed on Hon'ble Gujarat High Court decision in case of M/s. Saurashtra Cement Ltd. reported at 2010(360)ELT 71(Guj);
- (xiii). that the matter is purely of interpretation and there is no malafide intention to evade duty.

6(i). Personal Hearing in the matter was held on 01.01.2021. Shri K.A.Nagar, Authorized Representative, and Shri Aamir Khan, Authorized Person, attended the hearing. They stated that they had paid duty before issuance of SCN and hence penalty should be waived. They submitted a written submission during hearing and reiterated submissions made therein.

6(ii). In the written submission, the appellant has contended that :

- (a) the penalty equivalent to duty amount has been imposed upon them vide the impugned orders, however, since they have paid the duty prior to passing of the impugner orders, the maximum penalty that could be imposed in accordance with the provisions of Section 11AC is 25% of duty amount;
- (b) since duty has been paid before clearance of the goods and returns have been filed regularly, equivalent penalty is not sustainable and may be set aside;

7. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and the records/documents available in the matter. It is observed that the issue to be decided in the present appeal is whether the appellant is liable to pay the excise duty as confirmed in the impugned orders and whether the appellant is eligible for the benefit of Srl. No.223 of Notification No.12/2012-CE



dated 17.03.2012 vide which the appellant has to pay duty of Rs.2,500/- per metric tone.

8. The contents of the Notification No. 17/2007-CE dated 01.03.2007 has already been explained under the impugned orders. However, for the sake of convenience, the relevant contents are reproduced below :

"Notification No. 17/2007-CE dated 01.03.2007:

Compounded Levy Scheme for aluminium circles produced on cold rolling machines

In exercise of the powers..... and fixes the following rate of duty per cold rolling machine, per month:-

<i>(i) stainless steel pattis or pättas</i>	<i>Thirty thousand rupees</i>
<i>(ii) aluminium circles produced from sheets manufactured on cold rolling machines</i>	<i>Twelve thousand rupees</i>

Provided that no credit of duty paid on any raw materials, component part or machinery or finished products used for cold rolling of stainless steel pattis/pättas, or aluminium circles under the CENVAT Credit Rules, 2004 shall be taken. Provided further that the procedure mentioned hereinafter is followed.

2. Application to avail special procedure:-

(1) The manufacturer shall make an application in the form specified in Appendix-I to this notification to the Superintendent of Central Excise, as the case may be, for this purpose and the Superintendent, may grant permission for the period in respect of which the application has been made.

(2) The application shall be made so as to cover a period of not less than twelve consecutive calendar months, but permission may be granted for a shorter period for reasons to be recorded in writing, by the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be.

(3) If at any time during such period the manufacturer fails to avail himself of the procedure contained in this notification, he shall, unless otherwise ordered by the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, be precluded from availing himself of such procedure for a period of six months from the date of such failure.

(4) If the manufacturer desires to avail himself of the procedure contained in this notification on the expiry of the period for which his application was granted, he shall, before such expiry, make an application to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, as under sub-paragraph (1) and on his failure to do so, he shall, except as provided herein, be precluded from availing himself of such procedure for a period of six months from the date of such expiry.

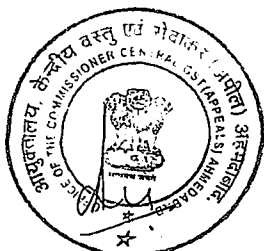
(5) Notwithstanding anything contained in sub-paragraph (1), an application made by a manufacturer, before the commencement of this notification, under sub-rule (1) of rule 96ZA of the Central Excise Rules, 1944, shall be deemed to be an application made under subparagraph (1) and the same shall be deemed to have been granted under subparagraph (1) and where such application has not been granted, the Assistant Commissioner or the Deputy Commissioner, as the case may be, shall dispose of the same as if it is an application under subparagraph(1).

3. Discharge of duty liability on payment of certain sum -

(1) A manufacturer whose application has been granted under paragraph 2 shall pay a sum calculated at the rate specified in this notification, subject to the conditions herein laid down, and such payment shall be in full discharge of his liability for duty leviable on his production of such cold re-rolled stainless pattas/pättis, or aluminium circles during the period for which the said sum has been paid:

Provided that if there is revision in the rate of duty, the sum payable shall be recalculated on the basis of the revised rate, from the date of revision and liability for duty leviable on the production of stainless steel pattis/pättas, or aluminium circles from that date shall not be discharged unless the differential duty is paid and in case the amount of duty so recalculated is less than the sum paid, the balance shall be refunded to the manufacturer

Provided further that when a manufacturer makes an application for the first time under paragraph 2 for availing of the procedure contained in this notification, the duty



liability for the month in which the application is granted shall be calculated pro-rata on the basis of the total number of days in that month and the number of days remaining in the month from the date of such grant.

(2) The sum payable under sub-paragraph (1) shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time during three calendar months immediately preceding the calendar month in which the application under paragraph 2 is made.

(3) The sum shall be tendered by the manufacturer along with the application.

4. Manufacturers declaration and accounts.

(1) The manufacturer who has been granted permission under paragraph (2) above shall make an application in the form specified in Appendix-II to this notification to the Superintendent-in-charge of the factory for permission to remove the stainless steel pattis/pattas, or aluminium circles from his premises during the ensuing month, declaring the maximum number of cold rolling machines installed by him or on his behalf, in one or more premises at any time during three calendar months immediately preceding the said calendar month in which such application is made.

(2) If such application is not made to the Superintendent of Central Excise within the time limit laid down in sub-paragraph (1), the manufacturer shall, unless, otherwise directed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, and in exceptional circumstances, be liable to pay duty on his entire production of stainless steel pattis/pattas, or aluminium circles during the month or part thereof in respect of which the application was to be made, at the rate prescribed in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any relevant notification issued under sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

(3) The manufacturer shall also intimate the Superintendent of Central Excise in writing of any proposed change in the number of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change.

5. Exemption from certain provisions etc.

(1) During the period in respect of which any manufacturer has been permitted to avail himself of the procedure of this notification, he shall be exempt from the operation of rule 8 of the Central Excise Rules, 2002.

(2) Except in accordance with such terms and conditions as the Central Government may by notification specify in this behalf, no rebate of excise duty shall be paid under rule 18 of the said Central Excise Rules, in respect of any stainless steel pattis/pattas, or aluminium circles exported out of India, out of the stock produced by such manufacturer during such period.

6. Provisions regarding new factories and closed factories resuming production.

....

7. Power to condone failure to apply for special procedure. -

....

8. Provision regarding factories ceasing to work or reverting to the normal procedure. -

....

9. Confiscation and penalty. -

If any manufacturer contravenes any provision of this notification in respect of any excisable goods, then all such goods shall be liable to confiscation, and the manufacturer shall be liable to penalty under rule 25 of the Central Excise Rules, 2002."

[Emphasis supplied]

9.

Following facts emerge out of the above referred Notification :

- (i) manufacturer shall make an application in specified form and seek permission from the Superintendent [Para 2(1) of the Notification];
- (ii) the duty amount shall be tendered alongwith the application. [Para 3(3) of the Notification];
- (iii) the manufacturer who has been granted permission, shall make an application in specified form seeking permission to remove the goods (i.e. aluminium circle in the present case); [Para 4(1) of the Notification];



- (iv) Rule 25 of Central Excise Rules, 2002 will be attracted/invoked for confiscation and penalty, in case of contravention of any provisions of the said Notification [Para 9 of the Notification].

10(i). In the present case, first of all, on the date of application i.e. 22.09.2016, the appellant did not submit the details of payment of duty, though it was mandatory and clearly mentioned under Para-3(3) of the said Notification. The permission, which is foremost requirement for availment of the said Notification, was not granted by the Superintendent to the appellant and the rejection was communicated to them vide letter dated 14.12.2016. Since the Superintendent did not find the payment of duty with the application of the appellant, as required under Para 3(3) of the said Notification, it was obvious on part of him not to grant permission. The appellant has also not submitted anything regarding the permission of clearance of goods as per the requirement mentioned under para-4(1) of the said Notification. Thus, the important ingredients required to avail the benefit of the Notification No.17/2007-CE dated 01.03.2007 are absent in the present appeals and appellant themselves are responsible for such lapse.

10(ii). Now, there appears to be some confusion as the impugned order demands excise duty from March-2016 to December-2016, whereas the application was submitted by the appellant on 22.09.2016 for the period 01.11.2016 to 31.10.2017. For this, enquiry was made from the Range Office and it is found that a SCN dated 13.04.2016 was issued to the appellant proposing demand of central excise duty for the period April-2015 to February-2016. The said SCN was adjudicated by the Asstt. Commissioner of Central Excise, Division-IV, Ahmedabad-I vide the Order-in-Original No.MP/06/AC/Div-IV/16-17 dated 21.12.2016 under which excise duty was confirmed for the period April-2015 to February-2016. The Asstt. Commissioner under Para-3 of the said Order-in-Original and also the appellant under grounds of appeal has specifically mentioned that the application was submitted on 28.09.2014 for the period 01.11.2014 to 31.10.2015. However, the Asstt. Commissioner of Central Excise, Division-IV, Ahmedabad-I under the Order-in-Original No.MP/06/AC/Div-IV/16-17 dated 21.12.2016 has mentioned that the application had been found made without making the payment of duty as required under Para-3(3) of the said Notification and thereby the appellant had precluded themselves from availing of the said benefit of Notification No.17/2007-CE dated 01.03.2007 as stipulated under para-2(3) if the said Notification. Under Para-5 of the said Order-in-Original, Asstt. Commissioner has also mentioned that the appellant did not apply for renewal of their application for the further period from 01.11.2015 as required under Para-2(4) of the said Notification and continued to pay the duty by availing benefit of the said Notification on its own. Under para-6 of the said Order-in-Original, the actual date of payment of duty has been mentioned. It is noticed that excise duty for the period May-



2015 to August-2015 was paid by the appellant on 05.01.2016 and for the period September-2015 to January-2016, the duty was paid on 12.01.2016. From this, it can be reasonably concluded that appellant was contravening the provisions of the said Notification and acting as per his own volition. And therefore, the SCN dated 13.04.2016 was issued to the appellant and duty of excise was confirmed for the period April-2015 to February-2016.

10(iii). The excise duty demanded from March-2016 onwards is actually subsequent demand in the matter where the appellant was not having any permission and they still availed the benefit of the Notification No.17/2007-CE dated 01.03.2007 at their own will without having necessary permission.

10(iv). Thus, looking to the past acts of the appellant of non-compliance of the provisions of the said Notification, the adjudicating authority has not granted permission for the period under dispute in the present appeals which is very much necessary and mandatory for availing of the benefit of the Notification No.17/2007-CE dated 01.03.2007. The appellant has contended that since they had submitted application it was on part of the authority to grant permission. Here, it is to be understood very clearly that it is not necessary for the authority to grant permission on every application as every authority considers the acts of the assessee during the prior period for which permission was granted/given and on the basis of that only, permission is granted for the current period. It is not mentioned in the Notification also that permission may be granted to every assessee who submit the application. In the present case, it is clearly coming out that the appellant has acted as per his own volition without following the provisions stipulated under the said Notification which resulted into denial of permission to them.

10(v). The appellant has also contended that the SSI exemption benefit under Notification No.8/2003-CE dated 01.03.2003 is available to them as their turnover is below 150 Lakhs. However, it is noticed that by virtue of Entry No.(xxxviii) under the Annexure of the said Notification, the exemption is not available to the aluminium circles, which is the product of the appellant. Thus, the benefit of exemption notification is not available to the appellant.

10(vi). The appellant has further contended that they at least are entitled the benefit under Serial No.223 of Notification No.12/2012-CE dated 17.03.2012 (General Exemption No.50) under which they are required to pay duty @ Rs.2500 per metric ton. For this they relied upon the case law of M/s. Swatantra Bharat Mills reported at 1993(68)ELT 504(GOI) and M/s.Raman Boards Ltd. reported at 1988(36)ELT 615(Tri.). It is noticed that the above referred case laws says that if two alternate exemptions are

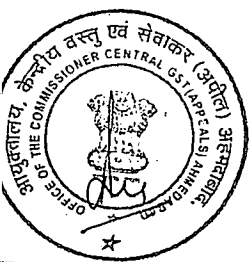


simultaneously available, the Assessee can opt any one of them and can also change his option. I am in agreement with such position. At the time of submission of application, the Notification No. 17/2007-CE dated 01.03.2007 and the Notification No.12/2012-CE dated 17.03.2012 were available to the appellant. It was the appellant, who opted Notification No.17/2007-CE dated 01.03.2007 by submitting their application. After receiving the application from the appellant, the Department has taken action over it. Had the appellant opted the Notification No.12/2012-CE dated 17.03.2012, the Department would have taken action over that only. Thus, it was the appellant, who opted the Notification best suited to them and they chose Notification No.17/2007-CE dated 01.03.2007. The Department/adjudicating authority has taken action over the application submitted by them only. In view of the above, the benefit of Notification No.12/2012-CE dated 17.03.2012 is not available to the appellant being not chosen by them at relevant time and they never changed their option at any point of time.

10(vii). Regarding the imposition of penalty equivalent to duty amount, the appellant has contended that they have paid the duty prior to passing of the impugned orders and therefore the maximum penalty that could be imposed in accordance with the provisions of Section 11AC is 25% of duty amount. They have further submitted that since the duty has been paid before clearance of the goods and returns have been filed regularly, equivalent penalty is not sustainable and may be set aside. It is noticed that the demand pertains to the period subsequent to February-2016 and SCN for the period, prior to the period under dispute in these appeals, has already been issued to the appellant. Thus, it can be concluded that this is a case of non-payment/short-payment of duty other than reason of fraud or collusion or any willful mis-statement or suppression of facts. In such matter :

- (a) Section 11AC(1)(a) stipulates that if the amount of duty alongwith interest payable thereon is paid either before issuance of Show Cause Notice or within 30 days of issuance of Show Cause Notice, no penalty shall be imposable, failing which, Rs.5,000/- or an amount not exceeding 10% of the duty amount, whichever is higher, can be imposed as penalty.
- (b) Section 11AC(1)(b) stipulates that if the amount of duty alongwith interest payable thereon is paid within 30 days of the date of communication of the order, the amount of penalty shall be 25% of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

The appellant failed to establish that the above referred (a) and (b) norms are fulfilled by them. Thus, penalty can not be set aside as contended by the appellant. However, it is noticed that the adjudicating authority has imposed penalty equivalent to the duty amount which is not sustainable as the maximum penalty which can be



imposed upon them is 10% of the duty so determined as discussed hereinabove. The appellant has requested a lenient view as they are small unit and has a small turnover. Looking to the totality of the case, I reduce the penalty to Rs.6,000/- for each impugned order.

11. In view of the above, the duty demanded under the impugned orders are upheld alongwith due interest. However the penalty imposed upon the appellant is reduced to Rs.6,000/- for each impugned order. With these directions, both the appeals are disposed of accordingly.

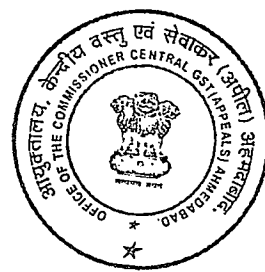
Akhil
25th January, 2021
(Akhillesh Kumar)
Commissioner (Appeals)

Date: .01.2021

Attested

Jitendra Dave
11/02/21

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED-POST TO :

M/s. Sameer Metal Industries,
Plot No.13, Devang Estate,
Opp. Ajmeri Farm, Shahwadi,
Behrampura, Ahmedabad-380023.

Copy to :-

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Pr. Commissioner/Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Addl. Commissioner, CGST & Cen.Excise, Ahmedabad South Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Ahmedabad South Comm'rate.
5. The Asstt. Commissioner, CGST & Central Excise, Divn-IV, Ahmedabad South Comm'rate.
6. Guard File.
7. P.A. File.